

Exhibit 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

vs.

Case No.

UBER TECHNOLOGIES, INC.; 17-cv-00939-WHA

OTTOMOTTO, LLC; OTTO

TRUCKING LLC,

Defendants.

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF JIM TIMMINS

San Francisco, California

Tuesday, September 26, 2017

Volume I

REPORTED BY:

REBECCA L. ROMANO, RPR, CSR No. 12546

JOB NO. 2715170

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2 | '90s, when it was sold to Orbital Sciences.

6	A.	No.
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9	A. History and philosophy.
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12	A. I do not.
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16 Q. Have you ever previously rendered an
17 expert opinion on a question of law?

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1 A. I'm not an attorney. And as such, I've 09:37:03
2 not rendered an opinion about a question of law.

3 Q. On paragraph 6, which bridges pages 2 and
4 3 of your report -- but, actually, the part I'm
5 going to read from is on page 3. 09:37:27

6 You say you have "considerable experience
7 in private company financing, mergers and
8 acquisitions ('M&A') and valuations and fairness
9 opinions."

10 Just taking those categories separately, 09:37:42
11 have you been involved with private company
12 financing concerning autonomous vehicles?

13 A. Other than the aforementioned experience
14 with Magellan Systems, I have not.

15 Q. And how about mergers and acquisitions 09:38:05
16 specific to the automotive -- autonomous vehicle
17 industry?

18 A. Again, excepting Magellan, I've done some
19 work to provide valuation to companies that were in
20 the space, and I believe some of that work may have 09:38:23
21 been used to support transactions, but I was not in
22 the middle of those transactions negotiating them.

23 Q. And this may overlap with what you just
24 said, but since you had valuations as a separate
25 category, I just wanted to ask whether you had been 09:38:40

1 Q. Yeah, I'm just asking if you have a view 04:06:27
2 on that, based on whatever information you have?
3 A. Based on the information I have, as of
4 this moment, no, I don't have a view.
5 Q. I mean, the information here says that 04:06:34
6 "In March 2014, Facebook announced its acquisition
7 of Oculus VR." This is page 67. "At the time,
8 Oculus VR was less than two years old, had only 75
9 employees, and before the acquisition, had only
10 fundraising-type pre-orders on developmental 04:06:49
11 units."
12 A. That -- that's an outcome that's
13 substantially different from the norm.
14 Q. Okay. Moving on to business in the final
15 opinion in your opening report, so section VII of 04:07:08
16 your report.
17 And I take it your opinion is that
18 "Levandowski Had Control of Bismuth, Sandstone, and
19 Tyto," as the heading indicates; is that correct?
20 A. He had control of Tyto through Sandstone 04:07:31
21 and he had control of Sandstone through Bismuth.
22 So, yes, by implication he had control of all three
23 entities.
24 Q. Have you previously opined in litigation
25 about an issue similar to this, about whether an 04:07:44

1 individual had control of other entities? 04:07:48

2 A. I've opined about control, the elements
3 of control, and whether tests for control in a
4 corporation had been met.

5 Q. Can you explain more -- was that more 04:08:05
6 than one occasion or is that one engagement that
7 you're thinking of?

8 A. I'm thinking of several engagements, and
9 in at least one case, it was about fiduciary duties
10 of a control shareholder, and one had to ascertain 04:08:28
11 whether this particular was an individual person
12 indeed had control and, therefore, bore the company
13 some fiduciary duties as a consequence of that.

14 And control frequently comes up in
15 evaluation context and as a question of setting 04:08:52
16 appropriate discounts or applying premium.

17 Q. Have you ever provided an opinion before
18 on control with respect to a trust arrangement?

19 A. Control through a trust, yes.

20 Q. Can you explain that? 04:09:18

21 A. A trust owned shares of a company and was
22 controlled by an individual and that individual
23 also directly owned shares of that same company.

24 Q. And what was your opinion in that matter?

25 A. That the same individual was able to 04:09:37

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1 direct all of those shares and that, therefore, she 04:09:38
2 had control.

3 Q. Was this a case in which you submitted an
4 expert report?

5 A. No. I believe it was California Superior 04:09:53
6 Court, I believe.

7 Q. What was the name of the case?

8 A. I'm trying to recall. I knew that would
9 be your next question and I am struggling to
10 recall. 04:10:05

11 Q. Any chance it was Quercus v. LiveFuels?

12 A. That was the earlier one which I
13 mentioned, which was the obligation of a control
14 shareholder and what fiduciary duties he owed.
15 I -- I don't -- 04:10:39

16 Q. So that case didn't -- Quercus Trust did
17 not involve the interpretation of a trust
18 instrument; is that fair?

19 A. I don't recall. I mean, that was six,
20 seven years ago. I -- I really don't recall. 04:10:50
21 That might -- that might have been it. I just
22 don't recall.

23 Q. Okay. Was there an objection to your
24 opinion in that case, or did you -- do you recall?
25 The trust case, the one in which you opined about 04:11:03

1 the -- 04:11:07

2 A. No, there was not.

3 Q. Do you remember whether you presented a

4 deposition on the issue in that case?

5 A. Deposition, yes. I don't recall 04:11:13

6 testifying about it at trial.

7 Q. Is there anything that would refresh your

8 recollection as to what the name of that case was?

9 A. I'm working at looking at that.

10 Q. Take your time. This is an important 04:11:33

11 question.

12 A. My recollection, such as it is, is that

13 Quercus Trust involved some of these questions.

14 And by coincidence, the case immediately above it,

15 Ryan Predictive Diagnostics and Large Scale 04:12:53

16 Biology --

17 Q. Uh-huh.

18 A. -- may have been the -- I -- I -- I

19 simply don't recall.

20 Q. That's okay. 04:13:01

21 A. Yeah, but Quercus certainly did.

22 Q. Okay. So how does your general work,

23 both litigation and otherwise, relate to trusts?

24 How -- how do they arise in the course of your

25 work? 04:13:22

A. When we're performing valuation of securities of companies and then allocating that down to valuation of securities, we're often looking at the nature of the shareholder who holds the securities. And as you're probably aware, many times wealthy individuals own securities individually -- I'm sorry -- indirectly through a trust, through a limited partnership often called a family limited partnership, or a FLIP.

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10         Those are the primary instances in which          04:14:11
11         it -- in which trusts enter into our work.
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12 Q. And just more specifically, have you, in
13 the litigation context, opined before upon -- on
14 the powers of a settlor of a trust?

15 A. I've not opined about that narrow 04:14:27

16 subject, no.

17 Q. How about the powers of a substitutor?

18	A. Again, no.
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19	Q. Have you personally set up a trust	
20	before?	04:14:35

21 A. Perhaps. And I say "perhaps" because my
22 brother is an attorney at home in Canada and did
23 some work on some things involving my mother before
24 she passed, and I remember signing some documents.
25 But I remember more being upset about what was 04:15:03

1 happening with my mother. 04:15:09

2 Q. And I take it that your work on personal
3 trust matters did not your affect your opinion in
4 this case?

5 A. It did not. And furthermore, it's a 04:15:15
6 different country.

7 Q. That, too.

8 Do you know what state law governs the
9 trust that's at issue in this case, Bismuth?

10 MR. McCAULEY: Objection. Form. 04:15:29

11 THE DEPONENT: I recall reading the trust
12 document. I don't recall offhand what it said.

13 Q. (By Ms. Hartnett) Does that affect your
14 analysis in this case, what state while either the
15 trust was formed under or what law would govern the 04:15:41
16 interpretation of the trust?

17 A. It did not on my reading of it.

18 Q. Was your analysis in this case about the
19 meaning of the trust agreement based on anything
20 beyond reading the trust agreement itself? 04:15:58

21 A. I refreshed my memory on the term
22 substitutor.

23 Q. How did you do that?

24 A. Looked at a legal dictionary.

25 Q. Did you do any other research related to 04:16:19

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1 your opinion on the Bismuth, Sandstone, Tyto issue, 04:16:21
2 aside from that, consulting a legal dictionary and
3 reviewing the documents that you cited in this
4 section?

5 A. You caught the other part of it, 04:16:32
6 reviewing the documents.

7 Q. Did you do any research of case law in
8 conjunction with your opinion?

9 A. I did not.

10 Q. Did you look at any state statutes or 04:16:39
11 other state law documents?

12 A. I did not.

13 Q. In your past work, have you ever given
14 opinion on the validity of a trust?

15 A. I have not. 04:16:53

16 Q. Have you advised someone to set up a
17 trust before?

18 A. That would be outside the purview of what
19 we do.

20 Q. What, if any, role would you have with 04:17:07
21 respect to forming a trust in your work?

22 A. Well, we -- we wouldn't be advising
23 people about the formation of trusts. We would
24 conduct valuations of entities and securities in
25 relation to that, but the actual formation of the 04:17:26

1 trust would -- would be done by an attorney 04:17:29

2 experienced in that area.

3 Q. Do you know whether there are certain

4 aspects of trusts and trust law that vary from

5 state to state? 04:17:40

6 A. Yes --

7 MR. McCAULEY: Objection. Form.

8 THE DEPONENT: -- that there -- there

9 are.

10 Q. (By Ms. Hartnett) What aspects? 04:17:44

11 A. I don't know.

12 Q. How do you know that there are

13 differences?

14 A. I just recall hearing that.

15 Q. Do you know whether the meaning of 04:17:50

16 certain terms in a trust agreement differs from

17 state to state?

18 MR. McCAULEY: Objection to form --

19 THE DEPONENT: I don't recall offhand.

20 Q. (By Ms. Hartnett) Was it relevant to 04:18:02

21 your opinion about the meaning of the Bismuth --

22 Bismuth trust, what state it was established in?

23 A. I looked to that when I read the

24 document, but -- and I don't recall what state it

25 was organized in, but I -- I didn't give it any 04:18:18

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1 further thought beyond that. 04:18:26

2 Q. Do you have any view about whether the
3 Bismuth truth document is customary and usual or --
4 or not?

5 MR. McCAULEY: Objection to form. 04:18:37

6 THE DEPONENT: In -- in what regard?

7 Q. (By Ms. Hartnett) Any regard.

8 MR. McCAULEY: Objection.

9 Q. (By Ms. Hartnett) Are you providing any
10 opinion about the validity of the document 04:18:42
11 itself --

12 A. No.

13 Q. -- or whether deviates from any normal
14 practice?

15 A. No, I am not. 04:18:50

16 Q. You're providing an interpretation of the
17 document.

18 Is that fair?

19 A. As to control.

20 Q. And so what methodology did you use to 04:18:57
21 determine control under the Bismuth document?

22 A. I looked at the wording.

23 Q. Can you walk me through it?

24 A. Do you wish to put the document in front
25 of me. 04:19:15

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1 Q. I'm happy to. You have your report as 04:19:16
2 well, so if you'd like to --
3 A. Yes.
4 Q. I don't think we have a copy of that. So
5 we'll go with your report, and if you can't answer 04:19:21
6 based on that, that's fine.
7 A. Well, Levandowski was in the wording of
8 the document appointed as its settler. And as the
9 settler, he had the power to appoint himself as
10 substitutor. And Bismuth was directed to purchase 04:19:41
11 an ownership interest in Sandstone.
12 Q. And as far as the i.e. in the first
13 sentence -- you say "as its settler," and then you
14 say "(i.e., the person who bestowed assets on the
15 trust)." 04:19:59
16 Was that your own definition of
17 "settler"?
18 A. That's my understanding of it.
19 Q. And then as far as the next sentence,
20 where you say "substitutor (i.e., the person with 04:20:05
21 the power to substitute assets)," is that your --
22 a definition that you're providing?
23 A. That's -- it's not word for word from the
24 legal def- -- def- -- dictionary, which I refer to
25 earlier, but it is my understanding of that. 04:20:19

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1 Q. Okay. And then on page -- turning 04:20:24
2 between page 27 and 28 -- this is in your
3 paragraph 67 -- you say that Bismuth became -- this
4 is the second sentence -- the sole member of
5 Sandstone, and then you say and "(i.e., the only 04:20:41
6 owner and the holder of the power to control)."
7 In that sentence, the "(i.e., the only
8 owner and the holder of the power to control),"
9 where does that understanding of what sole member
10 means come from? 04:20:58
11 A. My understanding of how limited liability
12 companies are organized and operate.
13 Q. So that was based on a review of the
14 Sandstone operating agreement?
15 A. And my understanding of LLCs, more 04:21:11
16 generally.
17 Q. Did you consult any dictionary or
18 other reference source, other than the footnote of
19 documents, to determine what sole member means?
20 A. In this context, no. Previously, I have. 04:21:25
21 Q. And then just to finish this paragraph,
22 the first sentence you -- starts on page 27, where
23 you note that "Sandstone was formed on
24 October 29, 2012, by Alaska Trust, as 'trustee.'"
25 And then you have in parentheses, "(i.e., the 04:21:41

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1 entity with power to administer property of the 04:21:43

2 trust) of Bismuth."

3 For that definition of trustee, where did

4 you get that from?

5 A. That's from my understanding. 04:21:52

6 Q. Did you consult any reference books

7 in -- or other reference sources in conjunction

8 with this definition in this report?

9 A. I did not.

10 Q. In your experience, is the sole member of 04:22:06

11 an LLC the only entity with power to control the

12 LLC?

13 A. A --

14 MR. McCAULEY: Objection to form.

15 THE DEPONENT: A duly organized LLC and 04:22:22

16 one that is not in violation of some agreement, or

17 something of that sort, then yes.

18 Q. (By Ms. Hartnett) Can the sole member of

19 an LLC choose to vest the power of control in

20 another person or entity? 04:22:34

21 A. That is within his or her power, yes.

22 Q. How do they do that? How does a sole

23 member vest their power in another person or

24 entity?

25 A. For instance, creating an operating 04:22:47

1 committee, a management committee. They go by 04:22:48

2 various names.

3 Q. And then page -- paragraph 69, you say

4 that "Sandstone was controlled by its sole member,

5 Bismuth." 04:23:02

6 What is the basis for the conclusion that

7 Sandstone was controlled by its sole member,

8 Bismuth?

9 A. The earlier work in paragraph 66 and 67.

10 Q. So you're basing that on the fact that -- 04:23:22

11 because Bismuth is the sole member, your conclusion

12 is that it -- that controlled Sandstone?

13 A. Yes.

14 Q. Let me hand you this document.

15 MS. HARTNETT: If you could mark this, 04:23:35

16 please.

17 THE DEPONENT: Thank you.

18 (Exhibit 2785 was marked for

19 identification by the court reporter and is

20 attached hereto.) 04:23:35

21 Q. (By Ms. Hartnett) I'm handing you a

22 document marked 2785, which is Bates-labeled

23 Sandstone 00 -- five zeros and a 1 through five

24 zeros and a 7, and it says Secretary of Cal- --

25 Secretary of State, State of California, LLC 04:24:13

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